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IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 440 OF 2005

IN THE MATTER OF THE COMPANIES LAW (2004 REVISION)

AND

**IN THE MATTER OF PHILADELPHIA ALTERNATIVE ASSET FUND,
LIMITED (IN LIQUIDATION)**

IN CHAMBERS

BEFORE THE HON. ANTHONY SMELLIE, CHIEF JUSTICE

THE 17th DAY JULY 2007

Appearances: Mr. Mark Holligan and Mrs. Sandie Corbett for the Joint Official Liquidators ("JOLs")

RULING

1. This case involves an investment or "hedge" fund which is now in liquidation because of losses allegedly resulting from the fraudulent manipulation of its accounts. The losses are reported to be in the order of USD179 Million. Approximately USD70 million have been recovered and pursuant to a Scheme of Arrangement with investors sanctioned by this Court, investors have received distributions of about USD40 million. Reserves of approximately USD30 million have been retained to provide for potential creditor claims, to fund actions for the recovery of the fraudulent losses and to fund the liquidation proceedings being carried on simultaneously here and in the United States of America where a Receiver has been appointed.

2. This application seeks the Court's approval for the JOL's fees and expenses for the period 13 September 2005 to 31 May 2007, in the amount of USD775,398.48.
3. The practice is that on these applications, the following guidelines are applied in deciding whether liquidators' fees and expenses are approved:
 - (1) the time properly spent by the liquidator and his staff in attending to the Company's affairs;
 - (2) the complexity (or otherwise) of the case;
 - (3) any respects in which, in connection with the winding up, there falls on the liquidator any responsibility of an exceptional kind or degree;
 - (4) the effectiveness with which the liquidator appears to be carrying out, or to have carried out his duties as liquidator, and
 - (5) the value and nature of the assets with which the liquidator has to deal.
4. These guidelines, taken from Rule 4.127 of the Insolvency Rules of the U.K., are not meant to be exhaustive and the Court can consider other matters arising from the particular circumstances of the case. See the judgment of this Court in *In Re Liberty Capital 2002 CILR 606* and as approved by the Privy Council in *The Attorney General v Cleaver [2006] UK PC 28*.
5. In keeping with those judgments, Practice Direction No. 1 of 2006 was issued to ensure that Creditors' or Investors' Committees are provided with all relevant information, when considering whether to recommend to the Court the approval of liquidator's fees and expenses.

6. This application is before me now on the basis that there has been full compliance with the law and practice as described above.
7. I am told by the JOLs by way of their affidavit evidence, that this application has the full approval of four of the five members of the Investors' Committee and the partial approval of the fifth.
8. My particular concern with this application has to do, broadly speaking, with whether the estate has been receiving value for money. This is a concern which comes within the rubric of guideline number (4) above.
9. The amounts for approval are already quite large and do not include other large sums already spent on legal fees in respect of a number of actions in the United States and Canada in which the estate has become involved.
10. While different from the legal fees, some of these fees being claimed by the JOLs are directly related to work undertaken by the JOLs in support of the Estate's involvement in those actions. It is however worthy of note here, for reasons to be explained below, that legal fees have been and should continue to be reasonably contained, among other things, because of the involvement of the United States District Court for the Eastern District of Pennsylvania ("the District Court"). I proceed on the basis that expenditure on litigation will be strictly contained and that that approach will guide the JOLs in relation to their own and that of their legal advisors' involvement in the various actions which may be taken before the Courts.
11. With that prospect in mind, the question now remains whether or not the expenditure, already incurred by the JOLs, represents real value to the Estate.

12. There is a Protocol in place which was agreed at the direction of this Court, to govern the working relationships of the JOLs and the United States Receiver.
13. The Protocol identifies distinct divisions of work; with the United States Receiver being primarily responsible for the litigation in that country.
14. His fees and expenses are subject to the approval of the District Court. Ultimately, so also are the fees and expenses of the JOLs. This is so because all the available assets of the Estate are within the United States and subject to the control of that Court.
15. It is fitting therefore that I should I here note that I have seen the memorandum of 3 April 2007 of Justice Baylson of that Court, in respect of the JOLs' first application for Release of Funds Pursuant to Protocol and in which approval was withheld by him pending the provision of further information.
16. From that memorandum, it appears that the guidelines of that Court for approval of fees are similar to those applied by this Court (at page 2 above). This ruling may therefore be of reciprocal interest to that Court.

Analysis

17. The charge out rates presented here for approval for the period 1 November 2006 to 31 May 2007 range from USD575 per hour for managing partner, down to USD142.50 per hour for the administrative assistants. These are at the very top level of such fees for the Cayman Islands. Before November 2006, they ranged from USD550 per hour to USD119.85 and were even then at the very top level. It appears that the JOLs have themselves applied an automatic increase to take the

rates to the USD575 level and to reflect what they perceive to be inflationary increases.

18. I do not think it appropriate that this Court should sanction increases on that basis. Whenever charge-out rates are approved, increases to those rates must be specifically sanctioned by the Court before they might be applied. The reasons for this are readily demonstrated from the degree of arbitrariness which has emerged. Take, for instance, the apparent inconsistency between the percentage increases for the managing partners (at approximately 5%) and the administrative assistants (at approximately 20% - these rising from USD119.85 to USD142.50 per hour). That disparity is difficult to understand if the common factor is inflation applied in a consistent way.
19. At all events, I cannot see the justification and so am unable to approve these fees based on charge out rates above those applicable as at 31 October 2006. Those rates continue to be quite reasonable in all the circumstances including when compared to other charge out rates in this jurisdiction.
20. I also proceed on the basis of the assurance given by the JOLs that, wherever possible, the work will be allocated to levels of staff at the lower end of the fee range. This is a matter which I note is also of concern to the District Court.
21. I am however, otherwise prepared to approve the application, recognizing that the fees and expenses were incurred in respect of the following eleven (11) areas of activity and in respect of which I accept that the results obtained have been of value to the estate:

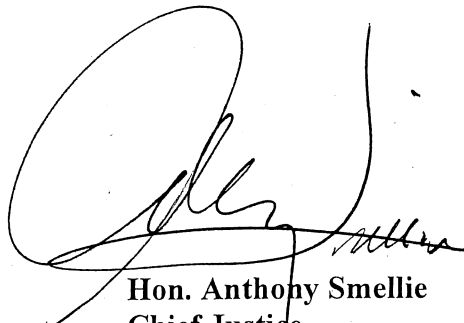
- (1) **Pre-appointment work** preparatory to seeking the order of this Court placing the Company into liquidation.
- (2) **Administration and Planning** of the work for the liquidation.
- (3) **Investigating and legal preparatory work** including in relation to the U.S. and Canada recovery actions and liaison with Cayman Islands Monetary Authority and the U.S. Commodity and Futures Trading Commission (“CFTC”).
- (4) **Investors:** Preparation of reports to investors; preparing for and attending meetings of investors in London, England; responding to their requests for information; settling lists of investors and establishing contact; setting up and maintaining individual files, etc.
- (5) **Directors: Lasbrook and Somerville of Maples Finance Limited** – all dealings with them including receipt and review of books and records held by Maples Finance and investigating and liaising with attorneys in respect of third party proceedings in the U.S. involving them. Defending against their action brought in the Cayman court for an order that their claim in the liquidation be immediately adjudicated.
- (6) **Administrator: UBS Funds Services** – similarly as with the directors in respect of receipt and review of books and records formerly held and as to UBS’ involvement in the U.S. proceedings.

Similarly defending against UBS' action for immediate adjudication of their claim.

- (7) **Investors (Creditors') Committee** – establishment, research into confidentiality issues and executions of confidentiality agreements; preparation of report and general correspondence to Committee members; obtaining Committee approval for Scheme of Arrangement; obtaining Committee approval of fees and expenses under terms of the Protocol etc.
- (8) **U.S. Receiver and Protocol** – negotiations for arriving at Protocol; application to Cayman Court for approval of Protocol and subsequent work with the U.S. Receiver pursuant to the Protocol in relation, among other things, to release of the Velocity Funds; review of the Special Master's Report in respect of Stadley Ronon's alleged conflict of interest in relation to UBS Cayman and monitoring the outcome of CFTC motion to replace the Receiver and other responses to Special Master's report.
- (9) **Scheme of Arrangement** – Settlement after various discussions - including with investors and Committee members – of the proposed claims valuation method; preparation of Scheme documentation and application to Cayman Court for its sanction of meeting with investors to approve the Scheme, holding the Scheme Meeting and distributions to investors pursuant to the Scheme.

- (10) **U.S. Litigation** – Review of draft complaint against Man Financial Inc; monitoring progresses of litigation, reviewing transcript of proceeding; assistance to U.S. Receiver on documents filed in the U.S. proceedings; periodic telephone conferences with the Receiver’s counsel.
- (11) **Bankruptcy of Paul Eustace and other actions in Canada** – obtaining recognition of the liquidation proceedings in Canada; filing proof of debt in the bankruptcy proceedings and review of correspondence regarding removal of the Canadian trustee.

21. Having regard to the foregoing factors, the application for approval of the JOL’s fees and expenses is approved, subject to the disallowance of the cost of living increases which have been applied without prior approval of the Court.


Hon. Anthony Smellie
Chief Justice
July 19 2007

